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3 UNITED STATES BANKRUPTCY COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
5 SAN FRANCISCO DIVISION

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U.S. BANKRUPTCY COURT  
NORTHERN DIST. OF CAL.  
SAN FRANCISCO, CA.

6 In re  
7 PACIFIC GAS AND ELECTRIC COMPANY,  
8 a California Corporation,  
9 Debtor,  
10 Federal I.D. No. 94-074260

Case No. 01-30923 DM

Chapter 11 Case

**DISCOVERY AND TRIAL  
SCHEDULING ORDER RE THE  
PG&E/OCC PLAN OF  
REORGANIZATION**

**DISCOVERY PROTOCOL AND TRIAL SCHEDULING ORDER  
ON THE PG&E/OCC PLAN OF REORGANIZATION**

14 1. Pursuant to Title 11 of the United States Code, Section 105, and Rules 7026(b)(2)  
15 and 9014 of the Federal Rules of Bankruptcy Procedure, the Court adopts the following  
16 Discovery Protocol and Trial Scheduling Order in connection with confirmation proceedings  
17 concerning the Plan of Reorganization under Chapter 11 of the Bankruptcy Code for Pacific Gas  
18 & Electric Company ("PG&E") dated July 31, 2003 and supported by PG&E, PG&E Corporation  
19 ("Corp."), and the Official Creditors' Committee ("OCC") (the "PG&E/OCC Plan"). For  
20 purposes herein, PG&E and co-proponents Corp. and the OCC are collectively referred to as the  
21 "Proponents."<sup>1</sup> Discovery procedures set forth in the Federal Rules of Bankruptcy Procedure  
22 shall be available only to the Proponents, the California Public Utilities Commission ("CPUC" or  
23 "Commission"), the United States Trustee ("UST") and to those persons or entities, other than the  
24 Proponents, who timely filed and served objections to confirmation of the PG&E/OCC Plan  
25 ("Objectors" or "Objecting Parties"). The Proponents, CPUC, UST, and the Objectors are  
26 collectively referred to herein as the "Parties." Any Party which is not a Proponent is referred to

<sup>1</sup> For purposes of this Discovery Protocol, the Plan Proponents shall be considered one Party except with respect to the determination of the written discovery limits. See section B, paragraph 7 below.

1 herein as a "Nonproponent."

2           2.       This Order supercedes this Court's (a) Order Re: Discovery Protocol and  
3 Scheduling entered on August 23, 2002, as amended by Order Supplementing the August 23,  
4 2002 Order Re: Discovery Protocol and Scheduling entered on October 3, 2002 (collectively, the  
5 "Prior Discovery Orders"); and (b) Confirmation Trial Scheduling Order entered on October 1,  
6 2002, as amended by the Order Supplementing Trial Scheduling Order entered on October 29,  
7 2002 and the Second Order Supplementing Trial Scheduling Order entered on December 4, 2002  
8 (collectively, the "Prior Trial Scheduling Orders").

9 **A.       OBJECTIONS TO PLAN**

10           3.       Any objection to confirmation of the PG&E/OCC Plan must (a) be in writing, (b)  
11 set forth the name and address of the objecting party, the nature of the Claim or Interest of such  
12 party, the nature of the objection and the legal basis therefore (as described more fully in  
13 Paragraph 4, below), and (c) be filed with and received by the Clerk of the United States  
14 Bankruptcy Court for the Northern District of California (including two copies for Chambers of  
15 the Honorable Dennis Montali), together with proof of service thereof, and served upon and  
16 received by the following parties, no later than 4:00 p.m., Pacific time, on September 2, 2003: (1)  
17 Pacific Gas and Electric Company, 77 Beale Street, P.O. Box 7442, San Francisco, California  
18 94120, Attn: General Counsel, fax: (415) 267-7257; (2) PG&E Corporation, One Market, Spear  
19 Street Tower, Suite 2400, San Francisco, California 94105, Attn: General Counsel, fax: (415)  
20 973-0200; (3) Howard, Rice, Nemerovski, Canady, Falk & Rabkin, A Professional Corporation,  
21 Attorneys for Pacific Gas and Electric Company, Three Embarcadero Center, 7th Floor, San  
22 Francisco, California 94111, Attn: James L. Lopes, fax: (415) 217-5910; (4) Cooley Godward  
23 LLP, Attorneys for Pacific Gas and Electric Company, One Maritime Plaza, 20th Floor, San  
24 Francisco, California 94111, Attn: Martin S. Schenker, (fax) (415) 951-3699; (5) Dewey  
25 Ballantine LLP, Attorneys for PG&E Corporation, 700 Louisiana, Suite 1900, Houston, Texas  
26 77002, Attn: Alan Gover, fax: (713) 445-1533; (6) Weil, Gotshal & Manges LLP, Attorneys for  
27 PG&E Corporation, 767 Fifth Avenue, New York, New York 10153, Attn: Michael Kessler, fax:  
28 (212) 310-8007; (7) The Office of the United States Trustee, 250 Montgomery Street, Suite 1000,

San Francisco, California 94104, Attn: Patricia Cutler, fax: (415) 705-3379; (8) Milbank, Tweed, Hadley & McCloy LLP, Attorneys for Official Unsecured Creditors' Committee, 601 South Figueroa Street 30th Floor, Los Angeles, California 90017, Attn: Robert Moore, fax: (213) 629-5063; (9) The California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94111, Attn: Arocles Aguilar, fax: (415) 703-4592; and (9) Paul, Weiss, Rifkind, Wharton & Garrison, Attorneys for the California Public Utilities Commission, 1285 Avenue of the Americas, New York, New York 10019-6064, Attn: Alan W. Kornberg, fax: (212) 757-3990. With respect to service of objections on the above-referenced parties, objecting parties may serve such parties via facsimile.

4. Objections to the PG&E/OCC Plan shall briefly state the grounds on which each objection is based in a manner which is sufficient to give notice to the proponents of the Plan of the nature of the objections, but shall NOT include a memorandum of legal or factual points and authorities or other discussion of the legal theories for the objection.

#### B. DOCUMENT AND WRITTEN DISCOVERY

5. **Demands for Inspection.** A Party may propound demands for inspection of documents on any other Party; however, a Party may respond in writing to any duplicative demands for inspection by reference to previous responses and objections, and shall not be required to produce documents responsive to duplicate requests if the non-privileged responsive documents have previously been made available to the Parties in a data room or document repository. Any Party may elect to produce documents by making them available for inspection and copying at a data room or document repository in San Francisco, California.

6. **Subpoenas for Documents.** Subject to the limitations on such discovery provided under the Federal Rules of Bankruptcy Procedure, any Party may subpoena documents from a person or entity that is not a Party.

7. **Other Written Discovery.**

(a) The total number of requests for admission that may be propounded by a Party on any other Party shall not exceed 25. Subparts to requests shall count against the limit of 25 requests.

1           b.       The total number of written interrogatories that may be propounded by a  
2 Party on any other Party shall not exceed 25. Subparts to interrogatories shall count against the  
3 limit of 25 interrogatories.

4           c.       The Parties may serve on PG&E fifteen (15) interrogatories, pursuant to  
5 Fed. R. Civ. P. 33(d), for purposes of document identification ("Document Identification  
6 Requests") only. In serving the Document Identification Requests, the Parties shall make good  
7 faith efforts to avoid excessively general descriptions of the requested documents that would be  
8 unreasonably burdensome for PG&E to identify, but the Parties may request discrete and easily  
9 identifiable categories of documents. These Document Identification Requests are in addition to  
10 other written discovery provided for in this Order. PG&E shall respond within fifteen (15) days  
11 after service of a Document Identification Request in a manner fully consistent with Fed. R. Civ.  
12 P. 33(d). Each such request shall be served on the Parties. PG&E shall make good faith and  
13 diligent efforts to be responsive to the Document Identification Requests.

14       8.       Written Discovery Cut-off. No Nonproponent shall propound any discovery  
15 requests provided for in this section (demands for inspection, document subpoenas, requests for  
16 admission or interrogatories) after August 29, 2003. Responses to Nonproponents' discovery  
17 requests shall be made by the earlier of the date provided by the Federal Rules of Civil Procedure  
18 or September 19, 2003. No Proponent shall propound any discovery requests provided for in this  
19 section (demands for inspection, document subpoenas, requests for admission or interrogatories)  
20 after September 7, 2003. Responses to Proponents' discovery requests shall be made by the  
21 earlier of the date provided by the Federal Rules of Civil Procedure or September 30, 2003.

22       9.       Service of Written Discovery. Subject to any limitations set forth in an applicable  
23 protective order, all written discovery requests propounded by Parties as well as any written  
24 responses thereto shall be served on all Parties at the time such request or response is made. Such  
25 service may be made by facsimile.

26       10.      Privilege Logs. By no later than two weeks after the initial production, Proponents  
27 shall make available the first installment of their privilege log to Parties who so request. By no  
28 later than two weeks after its initial production, Objectors shall make available the first

1 installment of their privilege log to Parties who so request. Following these initial installments,  
2 both Proponents and Objectors shall update their privilege logs each week. Once a Party requests  
3 a copy of a privilege log from any other Party, weekly updates shall be provided to the requesting  
4 Party without further request. All Parties shall use best efforts to make sure that their respective  
5 privilege logs are completed and updated as soon as reasonably practical, with due recognition to  
6 the contemplated trial schedule for the confirmation trial.

7 11. Data Room.

8 If any Party elects to produce documents by making them available for inspection  
9 at a data room, the following procedures shall apply:

10 (a) By no later than two weeks after its initial document production into the  
11 data room, such Party shall provide all Parties with objective database field information together  
12 with whatever database information it has in its own database, if any, which links to images or  
13 email text of documents that exist in hard copy in the Data Room ("Database Index") via  
14 CDROM or electronic mail, as may be agreed. Specifically, such Database Index may include  
15 the following data fields: bates-range numbers, author(s), addressee(s), copyee(s), date, subject  
16 matter or "re" line if reproduced verbatim from the document, and volume number corresponding  
17 to the files in the Data Room.

18 (b) Such Party shall update the Database Index on a weekly basis, and make  
19 the Database Index available to those Parties who request it within two business days of such  
20 request. Once a Party requests the Database Index from PG&E, weekly updates shall be provided  
21 to such Party without further request. PG&E shall use best efforts to make sure that the Database  
22 Index is completed and updated as soon as reasonably practicable, with due recognition to the  
23 contemplated schedule for the confirmation trial. PG&E shall provide the Database Index  
24 without any warranty as to its accuracy or utility.

25 (c) To the extent PG&E corrects errors in the Database Index, it shall make  
26 such corrections available to Parties otherwise receiving updates to the Database Index on the  
27 next date updates are provided.

28 (d) To the extent that Proponents deliver documents to the Data Room in

1 response to a written discovery request, PG&E shall update that response with respect to those  
2 documents referenced in weekly updates to the Database Index described herein.

3 (e) Any documents added to the Data Room by PG&E in any response to any  
4 document request propounded by any Objector or produced voluntarily by PG&E shall be  
5 identified and segregated by PG&E as being responsive to a particular document request, or  
6 produced voluntarily, as the case may be.

#### 7 C. NON-EXPERT WITNESSES

8 12. No later than September 8, 2003, Proponents shall file and serve on all other  
9 Parties a disclosure identifying the name, title and business address of each non-expert witness  
10 the Party intends to call at trial. For each witness identified by a Proponent, the Proponent's  
11 disclosure shall also include a brief summary of the subject matter of such witness' expected  
12 testimony. The Proponents shall make any such witness available for deposition at a date, on or  
13 before October 20, 2003, and location to be agreed by the parties.

14 13. No later than September 23, 2003, each Objector shall file and serve on all other  
15 Parties a disclosure identifying the name, title and business address of each non-expert witness  
16 the Objector intends to call at trial. For each witness identified by an Objector, the Objector's  
17 disclosure shall also include a brief summary of the subject matter of such witness' expected  
18 testimony. The Objectors shall make any such witness available for deposition at a date, on or  
19 before October 20, 2003, and location to be agreed by the parties.

#### 20 D. EXPERT WITNESSES

21 14. In order to facilitate the progress of these confirmation hearings, the Court  
22 exempts the Parties from the requirement of serving expert reports pursuant to Fed. R. Civ. P.  
23 26(a)(2), as made applicable to these proceedings by Fed. R. Bankr. P. 7026 and 9014, provided  
24 that any expert witness' direct written testimony and exhibits thereto filed and served after this  
25 date contain all of the information required by Fed. R. Civ. P. 26(a)(2).

26 15. On or before September 8, 2003, the Proponents and any other Party intending to  
27 sponsor direct expert testimony in support of the PG&E/OCC Plan shall file and serve on all other  
28 Parties such written direct expert testimony. The Proponents shall serve any documents reviewed

1 or relied on by such experts in preparing their testimony on the same day as they file and serve  
2 the expert testimony.

3 16. On or before September 29, 2003, any Objector or other Party intending to offer  
4 expert testimony to rebut or contradict the testimony of an expert filed pursuant to paragraph 15  
5 above or otherwise in opposition to confirmation of the PG&E/OCC Plan shall file and serve on  
6 all Parties such written expert testimony. The Parties offering the expert testimony shall serve  
7 any documents reviewed or relied on by such experts on the same day as they file and serve the  
8 expert testimony. On or before October 13, Plan Proponents shall file and serve on all Parties any  
9 written expert testimony they intend to offer solely to rebut or contradict the testimony of experts  
10 filed pursuant to the preceding sentence, including any documents reviewed or relied on by such  
11 experts. On or before October 27, Plan Objectors shall file and serve on all Parties any written  
12 expert sur-rebuttal testimony they intend to offer, including any documents reviewed or relied on  
13 by such experts.

14 17. The Party(ies) sponsoring direct testimony of an expert witness shall make such  
15 witness available for deposition at a time and location to be agreed by the parties, but in no event  
16 later than October 20, 2003. Any Party sponsoring rebuttal expert testimony shall make such  
17 expert available for deposition on the subject matter of the sur-rebuttal testimony promptly after  
18 the submission of the rebuttal testimony but in no event later than October 24, 2003. Any Party  
19 sponsoring sur-rebuttal expert testimony shall make such expert available for deposition on the  
20 subject matter of the sur-rebuttal testimony on a date and time to be arranged by the parties.

21 18. To cross-examine at trial any of the expert witnesses, a Party must notify in  
22 writing the Party who has filed the expert's written testimony on or before October 24, 2003.  
23 With respect to cross-examination at trial of rebuttal experts, a Party must notify in writing the  
24 Party who has filed the expert's written rebuttal testimony on or before October 31, 2003.

25 19. Any expert witness whose cross examination has been properly noticed in  
26 compliance with the preceding paragraph of this Order will be required to attend the Trial. Any  
27 Party who requests the right to cross-examine and then does not do so will be expected to  
28 reimburse the opposing Party no less than the expenses incurred in producing the declarant at the

1 Trial, unless another Party has cross-examined the witness as well. If no cross-examination is  
2 requested, the expert's written testimony will be deemed submitted and the expert witness will  
3 not be required to appear at trial. If cross-examination is requested, live testimony shall begin  
4 with a cross-examination by the opposing Party or Parties, followed by re-direct examination by  
5 the Party offering the expert witness.<sup>2</sup>

6 **E. WITNESS LISTS**

7 20. By October 24, 2003, all Parties shall serve and file their list of trial witnesses,  
8 excluding those to be called purely for rebuttal or impeachment. The presence of a witness' name  
9 on the witness list is to alert the court and the other side that the witness may be called. It does  
10 not mean that a particular person will be called. Accordingly, each Party is responsible for  
11 ensuring the attendance of every witness the Party intends to call, whether or not named by the  
12 other side. Except in exceptional circumstances, and absent consent by the other side, a Party will  
13 not be allowed to call a witness not named on that Party's witness list. Counsel will be expected  
14 to advise the court during the Trial about those witnesses that they expect to call in the following  
15 days.

16 **D. DEPOSITION PROCEDURES**

17 21. Counsel for the OCC, Milbank, Tweed, Hadley & McCloy, LLP ("OCC  
18 Counsel"), shall be responsible for coordinating the scheduling of all factual and expert  
19 depositions and the Parties shall follow the Discovery Scheduling Procedure set forth in Exhibit  
20 A hereto in addition to the provisions of this Order, with the following modifications:

21 ¶ 1: All discovery in this proceeding shall be governed by this  
22 Order.

23 ¶ 2: Paragraph 2a of Exhibit A is deleted in its entirety and  
24 replaced with the following: The Plan Proponents and  
25 Objecting Parties shall make reasonable efforts to reach  
agreement on the deposition schedules for presumptive

26 <sup>2</sup> A Party may also submit written declarations of its fact witnesses in lieu of live direct testimony;  
27 provided, however, that declarations of fact witnesses must be filed and served no later than October 106,  
28 2003. Proponents or Nonproponents, as the case may be, shall have the right to depose any such witness  
following the submission of such testimony with regard to the subject matter of the testimony regardless of  
whether the witness had been previously deposed. Such depositions shall take place on or before October  
20, 2003. Any such fact witnesses shall be made available for cross-examination at trial.



deponents under their respective control.

¶ 3: With respect to any deposition for which the OCC receives indications pursuant to Paragraph 4, the OCC shall provide access to all information received regarding that deposition to a) the Party with control over the deponent and b) to all Parties indicating an intention to ask questions of the deponent.

22. Each Party shall notify OCC Counsel and the other Parties of the date, time and location the witnesses it intends to call at trial will be available for deposition. To the extent practicable, each Party shall make a good faith effort to prevent scheduling more than a single deposition on a particular date.

23. Except in circumstances where a deposition is sought by a Nonproponent and not also by a Proponent or unless otherwise agreed by the Proponent that is not affiliated with the deponent, the examination of each deponent shall begin with one seven hour day of questioning by that Proponent (for purposes of this Order, time taken for a lunch break during a deposition is not counted against the seven-hour period, however time taken for other reasonable breaks during a deposition is counted against the seven-hour period). If a deposition of a deponent is sought by a Nonproponent and not also by a Proponent, the examination of such non-expert deponent shall begin with questioning by the Non-Proponent seeking the deposition. Only Parties and their agents, or anticipated expert witnesses and their agents, may attend depositions, and Parties shall participate in such depositions only in accordance with the Discovery Scheduling Procedure set forth in Exhibit A hereto.

24. Normally, the Court expects that non-expert depositions will conclude within two seven-hour days per witness, provided, however, that further time is permitted when necessary.

25. All Parties should attempt to coordinate their questioning of deponents, and should avoid using multiple examiners to cover similar subject matter.

#### **E. MODIFICATIONS OF DISCOVERY PROCEDURES**

26. Any Party seeking relief from or modification to any provision of this Order shall try first to obtain agreement, which agreement if reached shall be binding without further order of the Court, from the Parties who would be affected by such relief or modification. If an agreement

cannot be reached in good faith on an informal basis, the Party seeking such relief or modification may bring the matter to the Court's attention by writing a letter to the Court, with a copy to counsel for each Party, asking the Court to schedule a telephonic conference upon reasonable and appropriate notice. Such request for relief or modification shall be granted by the Court upon showing of good cause.

**F. SCOPE OF DISCOVERY**

27. Proponents, Objectors and the US Trustee may seek discovery regarding any matter, not privileged, that is relevant to the Court's consideration of the PG&E/OCC Plan including any matter raised in the written objections to the PG&E/OCC Plan. This provision shall be liberally construed in favor of a broad scope of discovery.

**G. PROTECTIVE ORDER**

28. The Protective Order filed in this matter on September 10, 2002, shall govern discovery in this Trial, with the following modifications:

- Section I.A.: "Action" shall refer to this Trial.
- Section I.B.: "Party" and "Parties" shall be interpreted in a manner consistent with the definitions in this Order.

**H. PROPOSED FINDINGS OF FACT**

29. All proposed findings and counter-findings shall be simple, declarative, non-argumentative, and consecutively numbered; supported by citations to or identification of the witnesses, declarations, documents or other evidence which shall support that finding; categorized by issue or elements of proof (*i.e.*, facts supporting conclusion that a particular plan is feasible, that a particular plan has been filed in good faith, etc.); captioned to identify the party submitting them, the appropriate plan, and the date of the submission (*e.g.*, "Proposed Counter-Findings of Fact (PG&E/OCC Plan - CCSF - 10-29-03)"); served on all Parties; filed in a hard copy form; and e-mailed (preferably, but optionally, in WordPerfect format) with the title "Proposed Findings" to Peggy Brister, Judge Montali's law clerk, at [Peggy\\_Brister@canb.uscourts.gov](mailto:Peggy_Brister@canb.uscourts.gov).

30. On or before October 22, 2003, the Proponents shall file and serve proposed findings of fact in support of their case in chief. The Proponents shall, based on their good-faith

1 belief, identify each proposed finding as disputed or undisputed.

2 31. On or before November 3, 2003, Objectors shall file and serve counter-findings.  
3 Unless the Objectors specifically dispute a finding labeled as "undisputed" by the Proponents,  
4 that finding will be deemed undisputed. The Objectors should propose any counter-findings that  
5 may be contrary to or in addition to those proposed by the Proponents.

6 **I. TRIAL BRIEFS**

7 32. Proponents' trial brief in support of the PG&E/OCC Plan shall not exceed 45  
8 pages. Objectors' trial briefs shall not exceed 20 pages. The page limitation may be adjusted for  
9 any Party only upon the receipt of *prior* permission from this court.

10 33. The Proponents shall file and serve their respective trial briefs in support of their  
11 case-in-chief on or before October 22, 2003.

12 34. The Objectors shall file and serve their respective trial briefs on or before  
13 November 3, 2003.

14 **J. EXHIBIT LISTS AND EXHIBITS**

15 35. Exhibit Lists: All Parties shall file and serve by October 27, 2003, their lists  
16 identifying exhibits they intend to introduce or use at Trial, excluding exhibits to be presented for  
17 impeachment or rebuttal purposes.

18 36. Exhibits: By October 27, 2003, all Parties shall make available their exhibits to  
19 Proponents and any Party who requests in writing copies of the trial exhibits. The exhibits shall  
20 be exchanged in the form and format in which they will be used at trial, unless the Parties agree  
21 otherwise.

22 37. By October 29, 2003, all Parties shall provide to the court — but not file — two  
23 hard-copy sets of binders, tabbed and with numbered pages, containing the documentary exhibits  
24 to be introduced.<sup>3</sup>

25 \\\

26 \_\_\_\_\_  
27 <sup>3</sup> Parties who intend to present exhibits electronically or digitally at trial are encouraged, but not required,  
28 to provide the court with three sets of compact discs with electronic versions of the documents. Parties are  
encouraged to consult with counsel for the Proponents to coordinate formats (*e.g.*, TIFF or PDF) and to  
facilitate compatibility and use of courtroom technology.

1           38. All exhibits shall be numbered, preceded by an easily identifiable abbreviation for  
2 each Party. For example, the Proponents should identify their exhibits as "PG&E/OCC #\_\_\_\_."  
3 Any paper(s) in the Court's file of which a Party intends the court to take judicial notice must be  
4 copied and included as an exhibit(s). All written testimony shall be pre-marked with exhibit  
5 numbers.

6           39. In the event a Party objects to another Party's exhibit, the Parties must meet and  
7 confer *before* Trial to attempt to reach agreement regarding admissibility. The court expects the  
8 Parties to make good faith efforts to resolve all evidentiary issues.

9           40. By October 30, 2003, the Parties should file and serve any objections they may  
10 have to admission of another Party's exhibits or written testimony. Other than objections under  
11 Fed. R. Evid. 402 and 403, objections to exhibits and written testimony not filed and served by  
12 this date shall be waived.

13           41. At the commencement of Trial, the Parties shall be prepared to stipulate into  
14 evidence all exhibits that are admissible for at least one purpose. Bona-fide objections may be  
15 reserved, with the issue of admissibility deferred until the exhibit is offered into evidence.

16 **K. TRIAL DATE**

17           42. The confirmation hearing on the PG&E/OCC Plan (the "Trial") shall commence  
18 on Monday, November 3, 2003 at 9:30 a.m., at the United States Bankruptcy Court, 235 Pine  
19 Street, Twenty-Second Floor, San Francisco, CA 94104.

20 **L. CROSS-EXAMINATION BY OBJECTORS**

21           43. The court expects counsel to confer and coordinate their cross-examination to  
22 minimize duplication and maximize efficiency.

23 **M. TRIAL OBJECTIONS**

24           44. Any objections during Trial as to the admissibility of exhibits or regarding the  
25 questioning of a witness will be deemed joined by all other opposing Parties, unless an opposing  
26 Party specifically opts out of that objection.

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## EXHIBIT A

### Discovery Scheduling Procedure

1. Deposition discovery in this proceeding shall be scheduled pursuant to the procedures set forth herein and in the Court's Order Re: Discovery Protocol and Scheduling dated August 23, 2002 ("Discovery Protocol"). Terms used herein shall have the same meanings as in the Discovery Protocol. The Discovery Coordinator shall be the firm of Milbank, Tweed, Hadley and McCloy, counsel to the Official Creditors' Committee. The primary contact for the Discovery Coordinator shall be Michael H. Diamond.

2. For the purpose of this Paragraph, a "presumptive deponent" means an individual who (a) is listed on at least one filed witness list, or (b) submits an expert report or declaration. Also for the purposes of this Paragraph, "under the control of" means (a) employed by or otherwise serving as an agent to, or (b) anticipated to serve as a fact or expert witness on behalf of.

a. The Plan Proponents shall make reasonable efforts to reach agreement with each other on deposition schedules for presumptive deponents under their control. When a deponent is not under the control of a Plan Proponent, the Plan Proponents and the Party under whose control the deponent is found shall make reasonable efforts to reach agreement on a deposition schedule for that presumptive deponent.

b. If one or more Parties seek the deposition of another Party or of another person who is not a presumptive deponent, the Parties seeking the deposition and the deponent or, if applicable, the Party under whose control the deponent is found, shall make reasonable efforts to reach agreement on a deposition schedule for that person.

c. In the event that either (i) the relevant Parties cannot reach agreement on a deposition schedule pursuant to subparagraphs 2.a. or 2.b. above, or (ii) other deposition scheduling disputes arise, any Party involved in the dispute may ask the Discovery Coordinator to resolve the dispute, and the Discovery Coordinator shall make reasonable efforts to do so if asked. Subject to Paragraph 3 below, the Discovery Coordinator shall not schedule a deposition pursuant to this Paragraph 2.c such that the Parties do not receive at least 10 days' notice through the Deposition Calendar.

d. The schedule for all depositions in this proceeding shall be posted on a Deposition Calendar maintained by the Discovery Coordinator and available to all Parties herein through a website at [www.milbank.com/clientweb](http://www.milbank.com/clientweb) (the "Deposition Calendar Website"), to which all Parties will have password access provided by the Discovery Coordinator. Once the availability of a deponent is provided as described in Sections B and C of the Discovery Protocol or an agreed deposition schedule for a deponent is proposed pursuant to subparagraphs 2.a. or 2.b. above, the Parties establishing the schedule shall give notice to the Discovery Coordinator pursuant to paragraph 8 below of such scheduling. Subject to Paragraph 3 below, such notice must be received by the Discovery Coordinator at least 11 days before the deposition is scheduled. The Discovery Coordinator shall post the scheduled deposition on the Deposition Calendar within 24 hours of either (i) receipt of such notice or (ii) the Discovery Coordinator's own scheduling of the deposition pursuant to subparagraph 2.c.

3. If extraordinary circumstances require that a deposition be scheduled on less than 10 days' notice to the Parties through the Deposition Calendar Website, then in addition to posting the deposition on the Deposition Calendar Website, the Discovery Coordinator shall give notice to all Parties of the scheduled deposition by email at the same time the deposition is posted.

4. Once a deposition appears on the Deposition Calendar, any other Party seeking to put questions to the deponent shall indicate through the Deposition Calendar Website that it desires to do so and shall provide an estimated time for its examination and a description of the subject matter of such examination. Except with respect to a deposition scheduled pursuant to paragraph 3 above, such indications must be made no later than the close of business Pacific Coast time the fourth business day before the deposition is to commence, or else the Party will not have the right to put questions to the deponent during the deposition. In the event of a deposition scheduled pursuant to paragraph 3 above, the Party will provide its time estimate and subject matter description by 5 p.m. Pacific Coast time at least two days prior to the deposition commencement date. A Party intending to put questions to the deponent shall attend the deposition (in person or telephonically) on the day the Discovery Coordinator sets for that Party's examination, beginning at the commencement of that day's examination.

5. Any Party wishing to attend any deposition in person without asking questions may do so without notice. As a matter of professional courtesy to the Party hosting the deposition, however, a Party intending to attend in person without asking questions shall whenever possible indicate in advance that it intends to do so through the Deposition Calendar Website, ideally no later than the close of business Pacific Coast time the fourth business day before the deposition is to commence.

6. Alternatively, a Party not seeking to ask questions may attend a deposition telephonically. Any Party wishing to attend telephonically shall indicate the name(s) of the individual person(s) who will attend telephonically through the Deposition Calendar Website no later than the close of business Pacific Coast time the second business day before the deposition is to commence, or else the party will not have the right to attend the deposition telephonically. To those Parties indicating in a timely fashion their intent to participate telephonically, the Discovery Coordinator shall provide call-in instructions by e-mail no later than the close of business Pacific Coast time the business day before the deposition is to commence. Any Party attending telephonically shall ensure that speech or other sounds from his or her office are not audible while the deposition proceedings are on the record, through use of a "mute" button or any other effective means.

7. The Discovery Coordinator shall assign time for each participant to ask questions at any deposition and shall post the time assigned to each party on the Deposition Calendar Website no later than 48 hours before the deposition is to commence. The Discovery coordinator may request that any witness be made available for additional days if it does not appear that it is possible to reasonably accommodate all persons wishing to interrogate within the originally scheduled time period.

8. Any notice to the Discovery Coordinator may be given to Michael H. Diamond by email at [mdiamond@milbank.com](mailto:mdiamond@milbank.com), by facsimile at 213 892 4700 or by mail at Milbank, Tweed, Hadley McCloy, 601 S. Figueroa St., Los Angeles, CA 90017. Oral notice to the discovery coordinator shall not be effective.

9. All discovery herein shall be governed by the Discovery Protocol, and the Discovery Coordinator shall have no power to alter the terms of the Discovery Protocol.